

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2231
(Senators Espegard, Tallackson)
(Representatives Carlson, Froelich)

AN ACT to amend and reenact sections 49-21-01, 49-21-01.3, 49-21-04, 49-21-05, 49-21-07, 49-21-08.1, 49-21-10.1, 49-21-20, and 49-21-23 of the North Dakota Century Code, relating to definitions, price changes, price schedules, dialing parity, refunds, penalties, and cost recovery for telecommunications services and telecommunications companies; and to repeal section 49-21-19 of the North Dakota Century Code, relating to telephone directory notices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01. Definitions. As used in this chapter, unless the context otherwise clearly requires:

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of WATS, 800, and message toll telecommunications services and private line transport services. ~~"Switched access" includes:~~
 - a. ~~Local exchange central office switching and signaling;~~
 - b. ~~Operator and recording intercept of calls;~~
 - c. ~~Termination of end user lines in the local exchange central office;~~
 - d. ~~The carrier common line charge for the line between the end user's premises and the local exchange central office; and~~
 - e. ~~Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.~~
2. "Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.
3. "Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the federal act as eligible to receive universal service support in accordance with section 254 of the federal act.
4. ~~"Essential telecommunications price factor" means:~~
 - a. ~~In the case of group I telecommunications companies, a factor determined annually as the lower of:~~
 - (1) ~~41.6667 percent of the percentage change of the average annual gross national product price index; or~~
 - (2) ~~The percentage change of the average annual gross national product price index minus 2.75 percentage points.~~

- ~~b. In the case of group II telecommunications companies, a factor determined annually as the lower of:
 - ~~(1) 52.0834 percent of the percentage change of the average annual gross national product price index; or~~
 - ~~(2) The percentage change of the average annual gross national product price index minus 2.0625 percentage points.~~~~
- ~~e. For purposes of the determination of essential telecommunications price factor, group I telecommunications companies are telecommunications companies with over fifty thousand subscribers and group II telecommunications companies are telecommunications companies with fifty thousand or fewer subscribers.~~
- 5. ~~"Essential telecommunications service" means service that is necessary for switched access to interexchange telecommunications companies and necessary for two way switched communications for both residential and business service within a local exchange area. A charge based on measured service may not be required for residential and business local exchange service. Essential telecommunications services are limited to:~~
 - ~~a. Switched access;~~
 - ~~b. Any new product or service offered in North Dakota after July 1, 1989, deemed essential by the commission after notice and hearing in accordance with chapter 28-32;~~
 - ~~c. Billing and collection of the billing company's own essential telecommunications services and billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group C access service;~~
 - ~~d. Primary directory listing, including nonlisted and nonpublished service, and access to directory assistance;~~
 - ~~e. Emergency 911 services and emergency operator assistance in local exchange areas in which emergency 911 service is not available;~~
 - ~~f. Except as provided in section 49-02-01.1, mandatory, flat rate extended area service to designated nearby local exchange areas;~~
 - ~~g. Installation of the service connection for essential services from the end user's premises to the local exchange network;~~
 - ~~h. Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has direct inward dialing and necessary signaling service such as touchtone used by end users for essential telecommunications services;~~
 - ~~i. Single or multiparty flat rate or measured residence and business service;~~
 - ~~j. Single or multiparty flat rate or measured combination business and residence service; and~~
 - ~~k. The transmission service line for a coin or pay telephone.~~
- 4. "Essential telecommunications service" means the following services:
 - a. Switched access;
 - b. The transmission service line for a coin or pay telephone;

- c. Installation of the service connection for other essential services from the end user's premises to the local exchange network;
 - d. Flat rate or measured residence, business and combination business and residence basic telephone service including the following service elements:
 - (1) Billing and collecting of the telecommunications company's charges for the service.
 - (2) Primary directory listing, including nonlisted and nonpublished service.
 - (3) Access to directory assistance.
 - (4) Access to emergency 911 service and emergency operator assistance in local exchange areas in which emergency 911 service is not available.
 - (5) Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas.
 - (6) Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has inward dialing and necessary signaling service such as touchtone used by end users for the service.
6. 5. "Federal act" means the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 [47 U.S.C. 151 et seq.].
7. ~~"Gross national product price index" means the fixed weighted price index of prices of all the goods and services that make up gross national product, as published quarterly by the United States department of commerce, economics and statistics administration, bureau of economic analysis. "Average annual gross national product price index" means the mean of the gross national product price index published in the third calendar quarter of a year through the second calendar quarter of the following year.~~
8. 6. "Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.
7. "Inside wire" and "premise cable" mean the telecommunications wire on the customer's side of a demarcation point or point of interconnection between the telecommunications facilities of the telecommunications company and the customer or premise owner established under title 47, Code of Federal Regulations, part 68, section 68.105.
9. 8. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
40. 9. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
44. 10. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
42. 11. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.
43. 12. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection ~~5~~ 4 that a customer

has the option to purchase either in conjunction with or separate from any essential telecommunications service. Nonessential telecommunications services include, but are not limited to:

- a. InterLATA and intraLATA message toll service;
 - ~~b. Private line transport service;~~
 - ~~e. b.~~ Calling features and information or enhanced services such as call waiting, call forwarding, three-way calling, intracall, speed calling, call transfer, voice or data store and forward, message delivery, or caller identification;
 - ~~d. c.~~ Centrex services and features, ~~not including transmission service described in subdivision h of subsection 5;~~
 - ~~e. d.~~ Installation of service connections in addition or supplementary to that described in subdivision ~~g c~~ of subsection ~~5 4~~ which also provides transmission service between the end user's premises and the local exchange central office switch;
 - f. ~~e.~~ Mobile telecommunications services using radio spectrum or cellular technology; and
 - ~~g. f.~~ Packet-switched services.
44. ~~13.~~ "Price" means any charge set ~~and published in accordance with chapter 49-24~~ and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.
45. ~~14.~~ "Private line transport service" means a telecommunications service to a customer over a circuit dedicated to the customer's exclusive use, within a local exchange area, or between or among local exchanges. Private line transport service includes services to customers who are end users and services to telecommunications companies.
46. ~~15.~~ "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.
47. ~~16.~~ "Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.
48. ~~17.~~ "Service element" means a telecommunications function or service component that is not useful to the user unless it is combined with one or more other telecommunications functions or service components.
18. "Switched access" means access to include:
- a. Local exchange central office switching and signaling;
 - b. Operator and recording intercept of calls;
 - c. Termination of end user lines in the local exchange central office;
 - d. The carrier common line charge for the line between the end user's premises and the local exchange central office;

- e. Billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group C access service; and
 - f. Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.
19. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
20. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.

SECTION 2. AMENDMENT. Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.3. Certain price increases prohibited - Essential telecommunications services.

Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.
- ~~2. The price of essential telecommunications services may be changed according to the essential telecommunications price factor. Increases may be reflected in prices after notice to the company's customers one billing period in advance. A decrease must be reflected in prices within thirty days of the effective date of the price factor. The commission shall publish the essential telecommunications price factor to be effective January 1, 1994, and annually thereafter, determined by reference to the average annual gross national product price index for the four calendar quarters ending with the second calendar quarter of the preceding calendar year. No price for a service may be changed more than once a year. Prices may be changed by service element, but the aggregate annual price change for a service may not exceed the essential telecommunications price factor. Complaints may be made pursuant to section 49-21-06 for any prices changed under this subsection. A discounted price for an essential telecommunications service is not the price of a service for purposes of this section. Discontinuing or altering any discount price for an essential telecommunications service is not a price change as regulated by this subsection.~~
- ~~3.~~ 2. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
- ~~4.~~ 3. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:
 - a. Price increases may be accumulated up to a percentage total of five percent.
 - b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.

- c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
 - d. Accumulated price increases may be implemented at the discretion of the telecommunications company.
 - e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.
- ~~5.~~ 4. The monthly price of residence service for ~~group 1~~ telecommunications companies ~~defined in subsection 2 of section 49-21-04~~ with over fifty thousand subscribers may be increased after July 31, 1999, up to fifteen dollars and fifty cents and may be increased after June 30, 2000, up to eighteen dollars. A telecommunications company increasing prices under this subsection must submit a report to the commission reasonably demonstrating that it reduced the prices of its intrastate intraLATA message toll service and intrastate switched access, as such prices existed on January 1, 1999, in aggregate by an annual amount not less than the annual revenue increase resulting from the service price increases under this subsection. Reductions in message toll and switched access prices attributable to the price increases under this section must be made by similar percentages as to be accomplished in a competitively neutral manner. The commission may review the report and may set aside pursuant to section 49-21-06 the prices of intraLATA message toll service and intrastate switched access if the reductions have not been made in a revenue neutral manner and by similar percentages. Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order.
- ~~6.~~ 5. The commission may investigate an increased price allowed pursuant to subsection ~~5~~ 4 and may set aside all or part of the increase if it finds the price is unfair or unreasonable, provided a price for residence service at or below the price in effect on January 1, 1999, may not be set aside under this subsection or section 49-21-06. The commission may not set aside all or part of an increased price as unfair or unreasonable if the commission determines after notice and opportunity for hearing the average cost of providing residence service, as calculated under either representative embedded or forward-looking economic cost methodologies, including shared and common costs, exceeds the price resulting from the increase.
- ~~7.~~ 6. Subject to the limitations of this section, nothing in this chapter prohibits an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

SECTION 3. AMENDMENT. Section 49-21-04 of the North Dakota Century Code is amended and reenacted as follows:

49-21-04. Price schedules filed with the commission. Each telecommunications company shall file with the commission in such form and detail as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

- 1. Schedules showing all prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any essential telecommunications service rendered ~~to the public~~ by such telecommunications company within this state;
- 2. All rules and regulations which in any manner affect the prices charged or to be charged for such essential service; and

3. All new prices and any price ~~changes~~ increases of essential services at least twenty days before the effective date of the new price or price ~~change~~ increase, unless the commission upon application and for good cause allows a lesser time, and except prices changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No price or price change is effective until filed in accordance with this chapter.

SECTION 4. AMENDMENT. Section 49-21-05 of the North Dakota Century Code is amended and reenacted as follows:

49-21-05. Schedule of prices to be ~~on file~~ available for public inspection. The commission may require any telecommunications company to ~~keep on file and accessible~~ make available to the public, subject to considerations for maintaining trade secrets or commercial confidentiality, ~~at any city in which the telecommunications company has a public office,~~ a printed or electronic schedule of ~~such~~ prices for ~~essential~~ telecommunications services offered by the telecommunications company as the commission may deem necessary.

SECTION 5. AMENDMENT. Section 49-21-07 of the North Dakota Century Code is amended and reenacted as follows:

49-21-07. Discrimination unlawful. It shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, or to charge or receive for any such service rendered, more or less than the prices provided for in the schedules then on file with the commission. A telecommunications company providing intrastate interexchange message toll services shall charge uniform prices on all routes where it offers such services. A telecommunications company providing local exchange service and message toll and private line services shall cover in its price for message toll and private line services, the price of providing access service in its own exchanges. Nothing in this chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from introducing promotional offerings, including special incentives, competitive discounts, and price waivers; from passing through any state, municipal or local taxes or fees to the specific geographic areas from which the taxes or fees originate; from contracting with a retail subscriber to provide telecommunications services at prices negotiated with the subscriber to meet service requests of the subscriber or competitive offerings of another telecommunications company; or from furnishing free telecommunications service or service at reduced prices to its officers, agents, servants, or employees.

SECTION 6. AMENDMENT. Section 49-21-08.1 of the North Dakota Century Code is amended and reenacted as follows:

49-21-08.1. Dialing parity - IntraLATA equal access. ~~The provisioning of dialing parity on an intraLATA basis, otherwise known as 1 + intraLATA equal access, may not be required to be provided by any company providing local exchange service prior to January 1, 2000. Every local exchange carrier shall provide intraLATA 1 + equal access dialing parity no later than January 1, 2000.~~

SECTION 7. AMENDMENT. Section 49-21-10.1 of the North Dakota Century Code is amended and reenacted as follows:

49-21-10.1. Excessive charges - Refunds. When complaint has been made to the commission or by the commission on its own motion concerning any price for a telecommunications service, and the commission has found, upon a hearing after notice given as required by law, that the telecommunications company has charged for such service a price in excess of the price permitted under section 49-21-01.3, has discriminated unreasonably, or has otherwise violated a statute, rule, or order, the commission may order that the telecommunications company make due refunds or

reparations, with interest from ~~the a date of collection~~ not earlier than two years from when the complaint was filed.

SECTION 8. AMENDMENT. Section 49-21-20 of the North Dakota Century Code is amended and reenacted as follows:

49-21-20. Penalty. Any person who shall violate any of the provisions of ~~sections~~ section 49-21-18 and 49-21-19 shall be guilty of a class B misdemeanor.

SECTION 9. AMENDMENT. Section 49-21-23 of the North Dakota Century Code is amended and reenacted as follows:

49-21-23. Construction of facilities - Cost recovery.

1. A telecommunications company is not required to construct, modify, or extend telecommunications facilities at the request or for the use of another telecommunications company except as required by the federal act.
2. The commission must allow a telecommunications company to recover in advance from the benefited company or customer any nonrecurring costs incurred at the request of another telecommunications company, a particular customer, or to comply with a commission order, including any order issued under section 49-21-10.2, for construction, modification or extension of the company's network in excess of the normal course of business and primarily for the benefit of another telecommunications company or for a particular customer, and not due to any negligence or misconduct on the part of the company. This subsection does not apply to:
 - a. Costs incurred to extend or modify a network to provide for interconnection, collocation, network access, or the sale of unbundled network elements, unless those costs are identifiable and specific to a particular end-user customer, or wholesale services to another telecommunications company under the federal act;
 - b. Costs incurred to remedy discriminatory or unequal treatment that has been found to exist by the commission or an arbitrator; or
 - c. Costs for which some other recovery treatment is specifically provided in federal or state law.

SECTION 10. REPEAL. Section 49-21-19 of the North Dakota Century Code is repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2231.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State